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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,344

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A. Wayne Olson

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EXAMINER

SHERR, CRISTINA O

ART UNIT

PAPER NUMBER

3685

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/777,344	<b>Applicant(s)</b> OLSON, A. WAYNE	
	<b>Examiner</b> CRISTINA OWEN SHERR	<b>Art Unit</b> 3685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 1/21/09.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,8-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This communication is in response to Applicant's Amendment filed January 21, 2009. Claim 1 has been amended. Claims 5-7 have been canceled. Claims 8-11 have been added.

### ***Response to Arguments***

2. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payne et al (US 5,713,314), also in view of Walker et al (US 5,794,207) further in view of Scagnelli et al (US 5,415,416).

5. Regarding claim 1 –

6. Payne discloses

a) establishing a deposit account for the customer with an escrow account provider; (fig.

7, "new account" at col 6 ln 19-30);

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- b) placing an order with a merchant which is essentially the same thing as determining the type of wager, in other words, deciding what to buy and letting the merchant know since a bet or wager is a type of product (col 5 ln 26-56, “user browses and requests a product”);
- c) choosing the type of product, where a bet is a type of product (col 5 ln 26-56, “user browses and requests a product”);
- d) transferring the funds from the deposit account to a prescribed account depending on the product (in this case a wager) (where there are several “merchant computers” each with different products, which are the equivalent of the different bets or wagers, and where the payer computer send the funds to the appropriate merchant computer depending on what the buyer is buying e.g. col 1 ln 50 - col 2 ln 2).
- e) notifying the merchant that funds have been transferred (e.g. col 2 ln 14-16 (where merchant is notified that buyer is authorized to buy)
- f) verifying that the product is available, which is the equivalent of verifying the merchant can cover the wager, since a wager is a product (i.e. if you want to buy blue sneakers you have to find out if the store has blue sneakers in your size, we note that the current unexpired advertisement in Payne is the equivalent of having a product be available, which is the equivalent of the merchant having the funds to cover the bet or wager e.g. col 5 ln 25-45); In addition, Walker teaches verifying that the seller can provide advertised service. (e.g. col 22 ln 1-20) A predictable result would be to apply this prior to a gambling service. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007) and

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h) transferring funds for the wager from the action account to one of the merchant and the customer. (funds to merchant account are the equivalent of payment to merchant, and funds to customer account are the equivalent of sending customer his product e.g. fig 10, col 7 ln 46-51).

7. Payne and Walker do not specifically disclose g) transferring the funds to an action account or escrow during pendency of the gaming action or purchase (Payne “new account” at col 6 ln 19-30). Scagnelli, however, does, see e.g. col 4 ln 55 - col 5 ln 10 where an “open account” is created with customer funds. From there customer funds go to the action account of the lotto or other betting facility during gaming action (e.g. col 5 ln 10-35) where they are held until the gaming is complete. At that point, either the customer or the vendor is paid.

8. Although Payne does not deal specifically with bets and wagers, it would be obvious to one of ordinary skill in the art at the time the invention was made that bets and wagers are products to be bought and sold as such, and thus to adapt Payne to obtain the instant application. Further, *KSR* forecloses Appellant’s argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396. Further, although claim 1 is broad enough to read on a merchant receiving daily orders for its goods and services, which is at least suggested by the teachings of Payne et al. (column 4, lines 50-55). Payne et al. do not explicitly recite transferring funds to a set aside account subsequent to balance verification. Walker et al. teach transferring funds into a second account (e.g. set-aside account, settlement account) in the amount of a purchase price (column 14, lines 5-7; column 22, lines 1-

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20). Walker et al. also teach a user sending a signature to an escrow provider to provide verification of delivery (column 22, lines 15-22) and charging a fee by the escrow provider for providing a service (column 20, lines 16-30). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Payne et al. and Walker et al. in order to ensure that a seller delivers purchased goods ('207, column 22, lines 9-12).

9. Further, it would be obvious to apply prior art to a gambling service such as combining Payne and Walker to Scagnelli, thus obtaining a predictable result. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007)

10. Regarding claim 2 –

11. As in h, above, transferring funds for the wager from the action account to one of the merchant and the customer. (in Payne, funds to merchant account are the equivalent of payment to merchant, and funds to customer account are the equivalent of sending customer his product e.g. fig 10, col 7 ln 46-51).

12. Regarding claim 3 –

13. Payne discloses approving the order or not subsequent to verifying whether product is available which is the equivalent of having the current unexpired advertisement in Payne which is the equivalent of having a product be available, which is the equivalent of the merchant having the funds to cover the bet or wager (e.g. col 5 ln 25-45); thus play is suspended or product cannot be bought and sold if product is unavailable.

14. Regarding claim 4 –

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15. It would be obvious to one of ordinary skill in the art to resume play or resume sales when product once again becomes available or when merchant once again has the funds where the product is a bet.

16. Regarding claim 8-11 –

17. As above, it would be obvious to apply prior art to a gambling service such as combining Payne and Walker to Scagnelli, thus obtaining a predictable result. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007). In such case, that accounts would be casino accounts, the merchant would be a casino.

18. Examiner's Note: Although Examiner has cited particular columns, line numbers and figures in the references as applied to the claims above for the convenience of the applicant(s), the specified citations are merely representative of the teaching of the prior art that are applied to specific limitations within the individual claim and other passages and figures may apply as well. It is respectfully requested that the applicant(s), in preparing the response, fully consider the items of evidence in their entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

### ***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Rossides (US 5,749,785) discloses a communications system using bets.

21. Rossides (US 6,443,841) discloses a communications system using bets.

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22. Odom et al (US 6,058,379) disclose real-time network exchange parameters and the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CRISTINA OWEN SHERR whose telephone number is (571)272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin L. Hewitt, II can be reached on (571)272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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